

ORDINANCE (ID # 2797)
**Ordinance - 2nd Reading of Revisions to Ch. 38 Nuisance Ordinance
Amendment**

Presented by:

Summary:

From City Attorney's Office:

Attached is the current version of Chapter 38, Articles I - IV of the City Code. I made some track changes and added some comments to the attached.

First, I ensured the attached includes the specific language of OCGA 41-2-9(a)(1)-(7). State law specifically requires the code contain those provisions. The trial judge determined the city's code did not include two of these required provisions. This change was already made last year (after the Noriega decision by the trial court), but I simply double checked to ensure it was in there and was correct.

Second, I added Section 38-38 to address the provisions of OCGA 41-2-9(b). While state law does not require the city code have the provisions of subsection (b) (unlike the requirement the city code contain the provisions of subsection (a)), I included this as a "belt and suspenders" approach. The trial court raised this as an issue and cited it as one of the reasons we could not enforce the abatement liens. I copied and pasted the exact provisions of subsection (b) and made appropriate adjustments.

Lastly, I added Section 38-39 to address any state law amendments. This morning Duane and I discussed this issue and so I wanted to create a mechanism to safe guard the city. You may recall, OCGA 41-2-12 (g) was updated in 2004 and subsection (g) was eliminated and relocated to subsection (c). This was yet another issue raised by the trial judge. Both the pre June 2011 code and post June 2011 code still made reference to subsection (g).

Christopher Mingledorff, Attorney

Moore, Ingram, Johnson & Steele, LLP

Recommendation:

Budget Information:

Supporting Documents:

- Woodstock Nuisance Code.02062014 (DOCX)

*Please email to
DPC & me.
Thank you!*

**City of Woodstock
Ordinance# (ID # 2797)**

**ORDINANCE - 2ND READING OF REVISIONS TO CH. 38 NUISANCE ORDINANCE
AMENDMENT**

SEE ATTACHMENT "A"

Whereas, the City of Woodstock, Georgia (hereinafter sometimes referred to as the "City") is a municipality duly formed and existing pursuant to Georgia law; and

Whereas, the 1983 Constitution of the State of Georgia provides for the self government of municipalities without the necessity of action by the General Assembly¹; and

Whereas, the City has the legislative power to adopt clearly reasonable ordinances, resolutions or regulations relating to its property, affairs and local government for which no provision has been made by general laws, and which are not inconsistent with the Constitution or any charter provision applicable thereto²; and

Whereas, Chapter 38 of the Code of Ordinances, of the City of Woodstock, Georgia regulates nuisances, provides authority to abate and establish penalties in the City of Woodstock; and

Whereas, the City Council of the City of Woodstock, Georgia desires to provide for the Health, Safety and General Welfare for the citizens of the City of Woodstock; and

Whereas, the City Council of the City of Woodstock, Georgia desires to amend Chapter 38, Article II of the Code of Ordinances; and

Whereas, the City Council of the City of Woodstock, Georgia has adopted the Georgia State Minimum Standard Property Maintenance Code; and

fully set out in this ordinance, with the additions, insertions, deletions and changes, if any, prescribed in Section 1 of this ordinance.

NOW, THEREFORE, BE IT RESOLVED AND ORDAINED by the Mayor and Council of the City of Woodstock, by the lawful authority vested in them, that Chapter 38, is hereby adopted in its entirety as follows:

¹ Ga. Const., 1983, Article IX, Section II, Paragraph II provides in pertinent part as follows:

"The General Assembly may provide by law for the self government of municipalities and to that end is expressly given the authority to delegate its power so that matters pertaining to the municipalities may be dealt with without the necessity of action by the General Assembly. "

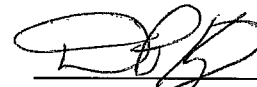
²O.C.G.A. § 36-35-3 (a) provides as follows:

"(a) The governing authority of each municipal corporation shall have legislative power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which are not inconsistent with the Constitution or any charter provision applicable thereto. Any such charter provision shall remain in force and effect until amended or repealed as provided in subsection (b) of this Code section. This Code section, however, shall not restrict the authority of the General Assembly, by general law, to define this home rule power further or to broaden, limit, or otherwise regulate the exercise thereof. The General Assembly shall not pass any local law to repeal, modify or supersede any action taken by a municipal governing authority under this Code section, except as authorized under Code Section 36-35-6."

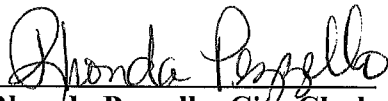
**City of Woodstock
Ordinance# (ID # 2797)**

1ST READING: 2/10/2014

2ND READING: 2/24/2014



**Donnie Henriques, Mayor
City of Woodstock, Georgia**

Attest: 
**Rhonda Pezzello, City Clerk
City of Woodstock, Georgia**

As approved this 24th day of February, 2014

Exhibit A (2-24-14)

Sec. 38-1. Purpose.

The purpose of this chapter is to exercise the police power in relation to public nuisances and abatement of such nuisances, to protect the public health, safety and welfare, and to promote the economic development of the city. It is also the purpose of this chapter to prevent and prohibit those conditions which reduce the value of private property, interfere with enjoyment of public and private property, create and constitute fire and other safety and health hazards, and generally create a menace to the health and welfare of the public and contribute to the degradation of the character of neighborhoods and depreciation of property values. It is necessary for the public health, safety and welfare to regulate, prevent and prohibit conditions which may constitute disorderly, disturbing, unsafe, unsanitary, fly-producing, rat-harboring and/or disease-causing places, conditions or objects. It is also necessary for the public social and economic welfare to regulate, prevent and prohibit conditions that degrade the city's scenic attractiveness and livability and its economic development.

Sec. 38-31. Conditions constituting a nuisance.

For the purposes of this article, the existence or accumulation of any combination of the following conditions or things on lands within the city is hereby declared and defined to be a "nuisance and menace to public health, safety and welfare":

- (1) Stagnant water on premises;
- (2) Any dead or decaying matter, weeds, vegetation or any fruit, vegetable, animal or rodent, upon premises which is odorous or capable of causing disease or annoyance to the inhabitants of the city;
- (3) The generation of smoke or fumes in sufficient amounts to cause odor or annoyance to the inhabitants of the city;
- (4) The pollution of public water or the injection of matter into the sewage system which would be damaging thereto;
- (5) Maintaining a dangerous or diseased animal or fowl;
- (6) Obstruction of a public street, highway or sidewalk without a permit;
- (7) Loud or unusual noises which are detrimental or annoying to the public;
- (8)

- (9) All walls, trees and buildings that may endanger persons or property;
- (10) Any business or building where illegal activities are habitually and commonly conducted in such a manner as to reasonably suggest that the owner or operator of the business or building was aware of the illegal activities and failed to reasonably attempt to prevent those activities;
- (11) Unused iceboxes, refrigerators and the like located outside of an enclosed structure;
- (12) Any trees, shrubbery or other plants or parts thereof, which obstruct clear, safe vision on roadways and intersections of the city; and
- (13) Any other condition constituting a nuisance under state law.

(Ord. of 6-20-2011, § 1)

Sec. 38-32. Graffiti.

(a)

Definitions.

Graffiti shall mean any inscriptions, words, figures, paintings, or other defacements that are written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any public or private building, structures, places or property without prior authorization, in accordance with all ordinances of the city, by means of any aerosol paint container, broad-tipped marker, gum label, paint stick, graffiti stick, etching equipment, brush, chalk, dye, or other device capable of scarring or leaving a visible mark.

Graffiti abatement shall mean the abatement procedure that identifies graffiti, issues notices to the landowner to abate the graffiti, and cures or removes such graffiti in absence of a response.

Gum label shall mean any substance consisting of a material such as, but not limited to, paper, fabric, cloth, plastic, vinyl and/or any other similar material, where the material also contains one or more surfaces containing a substance such as, but not limited to, any material commonly known as an adhesive or glue, which cannot be removed from the surface in an intact condition and with minimal efforts, including, but not limited to, decals, stickers, patches, stamps, or labels.

Private contractor shall mean any person with whom the City of Woodstock, Georgia shall have contracted to remove graffiti.

(b)

Findings; nuisance. The city council finds that graffiti is a public nuisance and is destructive of the rights and values of property owners as well as the entire community. Unless the city acts quickly to require the removal of graffiti from public and private property, the graffiti tends to remain. Other properties then become the target of graffiti, entire neighborhoods are affected and become less desirable places in which to be, all to the detriment of the City of Woodstock, Georgia and its residents. Further the city finds that rapid or prompt removal (less than 72 hours) serves as a deterrent to future defacement and such defacement is less likely to reappear. The city finds that graffiti and other defacement of public and private property, including walls, rocks, bridges, buildings, fences, gates, signage, other structures, trees, and other real and personal property within the city constitute a nuisance.

(c)

Graffiti prohibited. It shall be a violation of this section for any person to write, draw, carve, scratch, erect, or place upon any wall, rock, bridge, building, fence, gate, signage, other structure, tree or real or personal property, either publicly or privately owned, any drawing inscription, figure, or mark of the type which is commonly known or referred to as "graffiti". Any such "graffiti" shall be removed or eradicated within 72 hours of its first appearance.

(d)

Violation. A violation of any provision of this section shall be punishable by fine, restitution, or other penalty as the city council deems just and reasonable provided, however, no fine shall exceed the amount authorized by the City Charter.

(e)

Notice to remove.

(1)

Whenever the city's code enforcement officer or his designee determines that graffiti exists on any private property which is visible to any person utilizing any public road, parkway, alley, sidewalk, or other right-of-way or any public park or property, the code enforcement officer shall cause a notice to be issued to abate such nuisance. The property owner shall be given three days from the date of notice to remove the graffiti or the same will be subject to abatement by the city.

(2)

The notice to abate graffiti pursuant to this section shall be a written notice and shall be served upon the owner(s) of the affected property, as such owner(s) names and address appears on the latest Property Tax Assessment Rolls of Cherokee County, Georgia. If there is no known address for the owner, the notice shall be sent to the property address. The notice may be served in any of the following manners:

- a. By personal service to owners, occupant or manager of the property;
- b. By registered or certified mail addressed to the owner; or
- c. By posting a copy on the property.

(3)

Removal by city; lien. Upon failure of the owner(s) to comply with the notice to remove, the code enforcement officer shall issue a notice to appear before the judge of the municipal court. The judge of the municipal court shall be permitted to allow the city or a private contractor to remove the graffiti and charge any costs associated with removal to the owner of the property. The judge of the municipal court shall not be limited to removal by the city or private contractor and may allow any fines, restitution or other penalty to become a lien against the property.

(Ord. of 6-20-2011, § 1)

Sec. 38-33. Complaint of nuisance; hearing.

(a)

Any official or inhabitant of the city may direct a complaint of nuisance to the police department or building department, who shall investigate and may place the complaint on the municipal court docket for a hearing upon the basis of the investigation. The municipal court, after a ten-day notice to the party involved, shall hold a hearing thereon and upon finding a nuisance does exist shall issue an order to the owner, agent in control of or tenant in possession, stating that a nuisance has been found to exist and that the nuisance must be abated within so many hours or days as the judge shall deem reasonable, having consideration for the nature of the nuisance and its effect on the public.

(b)

Animal control officers, license and building inspectors shall and may also receive complaints, investigate the same and place on the court docket such complaints in the same manner as police officers.

(Ord. of 3-11-2013)

Sec. 38-34. Abatement by the city.

(a)

In any case where the owner, agent or tenant fails to abate a nuisance in the time specified, or where the owner, agent or tenant cannot be served with notice, or where the nature of the nuisance is such, in the opinion of the judge, that it must be immediately abated, the judge may issue an order to the chief of police or building

official directing the nuisance to be abated. The chief of police or building official, in such case, shall keep a record of the expenses and cost of abating the nuisance and the cost shall be billed against the owner, agent or tenant for collection as for city revenues.

(b)

Other city departments shall assist the chief of police or the building official as is necessary in abating nuisances under this section.

(Ord. of 3-11-2013)

Sec. 38-35. Nuisance per se, exception; summary abatement.

Nothing contained in this article shall prevent the mayor from summarily and without notice ordering the abatement of or abating any nuisance that is a nuisance per se in the law or where the case is an urgent one and the health and safety of the public or a portion thereof is in imminent danger.

(Ord. of 3-11-2013)

Sec. 38-36. Offense penalty.

It is declared to be an offense for any owner, agent or tenant to maintain or allow a nuisance to exist. Each day a nuisance is continued shall constitute a separate offense.

(Ord. of 3-11-2013)

State law reference— Failure to abate nuisance after order to do so is a state crime, O.C.G.A. § 41-1-6.

Sec. 38-37. Unfit structures.

(a)

It is the duty of the owner of every dwelling, building, structure or property within the city to construct and maintain such dwelling, building, structure or property in conformance with applicable codes in force in the city, or such ordinances which regulate and prohibit activities on property and which declare it to be a public nuisance to construct or maintain any dwelling, building, structure or property in violation of such codes or ordinances.

Comment [CCM1]: OCGA 41-2-9(a)(1)

(b)

The city building inspector or his designee shall be authorized to exercise the powers hereinafter outlined to effect the purpose of this section, including, but not limited to, the following:

(1)

Administer oaths and affirmations, examine witnesses and receive evidence;

(2)

Enter upon premises for the purpose of making examinations; however, such entries shall be made in such a manner as to cause the least possible inconvenience to the persons in possession;

(3)

Appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of the ordinance; and

(4)

Delegate any of his functions and powers under this article to such officers and agents as he may designate;

Comment [CCM2]: OCGA 41-2-9(a)(2), ...

(c)

Whenever a request is filed with the building inspector by a public authority or by at least five residents of the municipality or by five residents of the city charging that any dwelling, building, structure or property is unfit for human habitation or commercial, industrial or business use and not in compliance with applicable codes, is vacant and being used in connection with the commission of drug crimes, or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the building inspector shall make an investigation or inspection of the specific dwelling, building, structure or property. The building inspector may determine, under existing ordinances, that a dwelling, building, or structure is unfit for human habitation or is unfit for its current commercial, industrial, or business use if he finds that conditions exist in such building, dwelling, or structure which are dangerous or injurious to the health, safety, or morals of the occupants of such dwelling, building, or structure; of the occupants of neighborhood dwellings, buildings, or structures; or of other residents of such county or municipality. Such conditions may include the following (without limiting the generality of the foregoing):

(1)

Defects therein increasing the hazards of fire, accidents, or other calamities;

(2)

Lack of adequate ventilation, light, or sanitary facilities;

(3)

Dilapidation;

(4)

Disrepair;

(5)

Structural defects; and

(6)

Uncleanliness.

The building inspector may determine, under existing ordinances, that a dwelling, building, or structure is vacant, dilapidated, and being used in connection with the

commission of drug crimes upon personal observation or report of a law enforcement agency and evidence of drug crimes being committed.

(d)

The building inspector may issue a complaint in rem against the lot, tract or parcel on real property on which such dwelling, building or structure is situated or where such public health hazard or general nuisance exists and if the building inspector's investigation or inspection identifies that any dwelling, building, structure or property is:

(1)

Unfit for human habitation or for commercial, industrial or business use and not in compliance with applicable codes;

(2)

Is vacant and being used in connection with the commission of drug crimes; or

(3)

Constitutes an endangerment to the public health and safety as a result of unsanitary or unsafe conditions.

(e)

Whenever the building inspector determines that there exists an unfit structure within the city, he shall cause the matter to be placed on the agenda of the city council at the next regular meeting for approval, in ordinance form, of the building inspector proceeding to effectuate the purpose of this section with respect to a particular piece of property which the building inspector has found unfit. Upon the approval of the city council, the building inspector shall serve or cause to be served upon the recorded owner of such structure at the address shown on the city's current ad valorem tax records and upon any other person or entity known to have an interest in such building or structure, a written notice, in the form of a summons and complaint.

(f)

The complaint shall identify the subject real property by appropriate street address and official tax map reference, identify the owner and parties in interest, state with particularity the factual basis for the action, and contain a statement of the action sought by the public officer to abate the alleged nuisance.

(g)

The summons shall notify the interested parties that a hearing will be held before a court of competent jurisdiction as determined by O.C.G.A. § 41-2-5, at a date and time certain and at a place within the county or municipality where the property is located. Such hearing shall be held not less than 15 days nor more than 45 days after the filing of a complaint in the municipal court. The owner and parties in interest

shall have the right to file an answer to the complaint and to appear in person or by attorney and offer testimony at the time and place fixed for hearing.

Comment [CCM3]: OCGA 41-2-9(a)(3).

(h)

If, after such notice and hearing, the court determines that the dwelling, building or structure in question is unfit for human habitation or is unfit for its current commercial, industrial or business use and not in compliance with applicable codes; is vacant and being used in connection with the commission of drug crimes; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the court shall state in writing findings of fact in support of such determination and shall issue and cause to be served upon the owner and any parties in interest that have answered the complaint or appeared at the hearing an order to abate the nuisance:

Comment [CCM4]: OCGA 41-2-9(a)(4).

(1)

If the repair, alteration or improvement of the dwelling, building or structure can be made at a reasonable cost in relation to the present value of the dwelling, building or structure, requiring the owner, within the time specified in the order, to repair, alter or improve such dwelling, building or structure so as to bring it into full compliance with the applicable codes relevant to the cited violation and, if applicable, to secure the structure so that it cannot be used in connection with the commission of drug crimes; or

Comment [CCM5]: OCGA 41-2-9(a)(4)(A).

(2)

If the repair, alteration or improvement of the dwelling, building or structure in order to bring it into full compliance with applicable codes relevant to the cited violations cannot be made at a reasonable cost in relation to the present value of the dwelling, building or structure, requiring the owner, within the time specified in the order, to demolish and remove such dwelling, building or structure and all debris from the property.

Comment [CCM6]: OCGA 41-2-9(a)(4)(B).

(i)

For purposes of this section, the court shall make its determination of "reasonable cost in relation to the present value of the dwelling, building or structure" without consideration of the value of the land on which the structure is situated; provided, however, costs of the preparation necessary to repair, alter or improve a structure may be considered. Income and financial status of the owner shall not be a factor in the court's determination. The present value of the structure and the costs of repair, alteration or improvement may be established by affidavits of real estate appraisers with a state appraiser classification as provided in O.C.G.A. tit. 43, ch. 39A (O.C.G.A. § 43-39A-1 et seq.), qualified building contractors, or qualified building inspectors without actual testimony presented. Costs of repair, alteration or improvement of the structure shall be the cost necessary to bring the structure into compliance with the applicable codes relevant to the cited violations in force in the jurisdiction.

(j)

If the owner fails to comply with an order to repair or demolish the dwelling, building or structure and abate the nuisance, the building inspector may cause such dwelling, building or structure to be repaired, altered or improved or to be vacated and closed or demolished. Such abatement action shall commence within 270 days after the expiration of time specified in the order for abatement by the owner. Any time during which such action is prohibited by a court order issued pursuant to O.C.G.A. § 41-2-13 or any other equitable relief granted by a court of competent jurisdiction shall not be counted toward the 270 days in which such abatement action must commence. The building inspector shall cause to be posted on the main entrance of the building, dwelling or structure a placard with the following words:

"This building is unfit for human habitation or commercial, industrial or business use and does not comply with the applicable codes or has been ordered secured to prevent its use in connection with drug crimes or constitutes an endangerment to public health or safety as a result of unsanitary or unsafe conditions. The use or occupation of this building is prohibited and unlawful."

Comment [CCM7]: OCGA 41-2-9(a)(5).

(k)

If the building inspector has the structure demolished, reasonable effort shall be made to salvage reusable materials for credit against the cost of demolition. The proceeds of any moneys received from the sale of salvaged materials shall be used or applied against the cost of the demolition and removal of the structure, and proper records shall be kept showing application of sales proceeds. Any such sale of salvaged materials may be made without the necessity of public advertisement and bid.

(l)

The building inspector and city are relieved of any and all liability resulting from or occasioned by the sale of any such salvaged materials, including, without limitation, defects in such salvaged materials.

Comment [CCM8]: OCGA 41-2-9(a)(6).

(m)

That the amount of the cost of demolition, including all court costs, appraisal fees, administrative costs incurred by the county tax commissioner or municipal tax collector or city revenue officer, and all other costs necessarily associated with the abatement action, including restoration to grade of the real property after demolition, shall be a lien against the real property upon which such cost was incurred.

Comment [CCM9]: OCGA 41-2-9(a)(7).

(Ord. of 3-11-2013)

Charter reference— Specific powers of city to abate nuisance, § 1.13(23).

State law reference— Municipal ordinances relating to unfit buildings and structures, O.C.G.A. § 41-2-9

Sec. 38-38 Nuisance Abatement Lien.

Deleted: s

The lien provided for in Section 38-37(m) shall attach to the real property upon the filing of a certified copy of the order requiring repair, closure, or demolition in the office of the clerk of superior court in the county where the real property is located and shall relate back to the date of the filing of the lis pendens notice required under subsection (c) of O.C.G.A. § 41-2-12. The lien shall be enforced and collected pursuant to state law, including, but not limited to, O.C.G.A. § 41-2-9(b) as follows:

(a) Upon final determination of costs, fees, and expenses incurred in accordance with this Article, the public officer responsible for enforcement actions in accordance with this Article shall transmit to the city tax collector or city revenue officer a statement of the total amount due and secured by said lien, together with copies of all notices provided to interested parties. The statement of the public officer shall be transmitted within 90 days of completion of the repairs, demolition, or closure. It shall be the duty of the city tax collector or city revenue officer, who is responsible or whose duties include the collection of municipal taxes, to collect the amount of the lien using all methods available for collecting real property ad valorem taxes, including specifically Chapter 4 of Title 48 of the Official Code of Georgia, provided, however, that the limitation of O.C.G.A. § 48-4-78 which requires 12 months of delinquency before commencing a tax foreclosure shall not apply. The municipal tax collector or city revenue officer shall remit the amount collected to the city.

(b) Enforcement of liens pursuant to this Article may be initiated at any time following receipt by the municipal tax collector or city revenue officer of the final determination of costs in accordance with this Article. The unpaid lien amount shall bear interest and penalties from and after the date of final determination of costs in the same amount as applicable to interest and penalties on unpaid real property ad valorem taxes. An enforcement proceeding pursuant to O.C.G.A. § 48-4-78 for delinquent ad valorem taxes may include all amounts due under this Article and.

(c) The redemption amount in any enforcement proceeding pursuant to this Article shall be the full amount of the costs as finally determined in accordance with Article together with interest, penalties, and costs incurred by the municipal tax collector or city revenue officer in the enforcement of such lien. Redemption of property from the lien may be made in accordance with the provisions of O.C.G.A. §§ 48-4-80 and 48-4-81.

Sec. 38-39 – State Law Amendments

In the event O.C.G.A. § 41-2-1 *et. seq.* is amended or altered, then this Article shall be automatically amended, revised and altered to comply with any amendments or alterations to O.C.G.A. § 41-2-1 *et. seq.* and such amendment or alteration to O.C.G.A. § 41-2-1 *et. seq.* shall preempt any non-compliant provision of this Article, thereby ensuring this Article is in full and complete compliance with existing state law.

Formatted: Font: Arial, 10.5 pt, Not Bold

Formatted: Indent: First line: 0.42"

Formatted: Font: Arial, 10.5 pt, Not Bold

Comment [CCM10]: This is the language from OCGA 41-2-9(b)(1).

Formatted: Font: Arial, 10.5 pt, Not Bold

Formatted: Font: Arial, 10.5 pt, Not Bold

Formatted: Font: (Default) Arial, Not Bold

Formatted: Indent: First line: 0.08"

Formatted: Font: (Default) Arial, 10.5 pt

Formatted: Font: (Default) Arial, 10.5 pt

Formatted: Font: (Default) Arial, 10.5 pt

Formatted: Font: (Default) Arial, 10.5 pt

Formatted: Font: (Default) Arial, 10.5 pt

Formatted: Font: (Default) Arial, 10.5 pt

Formatted: Font: (Default) Arial, 10.5 pt

Formatted: Font: (Default) Arial, 10.5 pt

Formatted: Font: (Default) Arial, 10.5 pt

Formatted: Font: (Default) Arial, 10.5 pt

Formatted: Font: (Default) Arial, 10.5 pt

Formatted: Indent: First line: 0.08"

Formatted: Font: (Default) Arial, 10.5 pt

Formatted: Font: (Default) Arial, 10.5 pt

Formatted: Font: (Default) Arial, 10.5 pt

Formatted: Font: (Default) Arial, 10.5 pt

Formatted: Font: (Default) Arial, 10.5 pt

Formatted: Font: (Default) Arial, 10.5 pt

Formatted: Font: (Default) Arial, 10.5 pt

Formatted: Indent: First line: 0.08"

Formatted: Font: (Default) Arial, 10.5 pt

Formatted: Font: (Default) Arial, 10.5 pt

Formatted: Font: (Default) Arial, 10.5 pt

Formatted: Font: (Default) Arial, 10.5 pt

Formatted: Font: (Default) Arial, 10.5 pt

Formatted: Font: (Default) Arial, 10.5 pt

Formatted: Font: (Default) Arial, 10.5 pt

Formatted: Font: (Default) Arial, 10.5 pt

Comment [CCM11]: I added this to addr ... [1]

Formatted: Indent: First line: 0.42"

Formatted: Font: 10.5 pt, Not Bold

Formatted: Font: 10.5 pt

Formatted: Font: 10.5 pt, Not Bold

Formatted: Font: 10.5 pt

Secs. 38-40—38-60. Reserved.

Sec. 38-61. Code adopted.

The Georgia State Minimum Standard Property Maintenance Code, (International Property Maintenance Code, 2006 Edition, with Georgia 2009 Amendments) (hereinafter referred to as the "GSMSPMC") as it now exists or as adopted by the state, is adopted by reference and incorporated herein as though it were fully copied in this section:

(Ord. of 6-20-2011, § 1)

Sec. 38-62. Amendments to the Georgia State Minimum Standard Property Maintenance Code.

The following amendments to the GSMSPMC are made as required to complete sections of the code or to meet local needs. The sections of the GSMSPMC referenced below are replaced in their entirety as stated below. Section 111, consisting of 111.1 through 111.8 of the GSMSPMC are hereby deleted in their entirety. Otherwise only those sections and definitions listed herein are amended and only to the extent described herein.

101.1 Title. These regulations shall be known as the Property Maintenance Code of the City of Woodstock, Georgia, hereinafter referred to as "this code."

102.3 Application of other codes. Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the adopted procedures and provisions of the Georgia State Minimum Standard Building Code, Georgia State Minimum Standard One and Two Family Dwelling Code, Georgia State Minimum Standard Gas Code, Georgia State Minimum Standard Mechanical Code, Georgia State Minimum Standard Electrical Code, Georgia State Minimum Standard Plumbing Code, Georgia State Minimum Standard Fire Code and the Georgia State Minimum Standard Energy Code. (Collectively together with the GSMSPMC the "Georgia State Minimum Standards Codes").

103.1 General. The property maintenance and inspection section of the Building Safety Division is hereby created and the executive official in charge thereof shall be known as the Code Official.

103.5 Fees. The fees for activities and services performed shall be determined by the judge of the Municipal Court following a citation.

104.7 Official records. The Code Official shall keep official records of all business and activities as specified in the provisions of this code. Such records shall be retained in the official records as long as the building or structure to which such records relate remains in existence, unless otherwise provided for by other regulations.

107.4 Penalties. Penalties for noncompliance with orders and notices shall be as set forth in Section 106.4 or section 1-7 of the Code of Ordinances of the City.

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in Georgia State Minimum Standard Codes or other codes adopted by the city, such terms shall have the meanings ascribed to them as stated in those codes. The following terms are further defined:

Georgia State Minimum Standard Building Code; is the International Building Code with Georgia State Amendments.

Georgia State Minimum Standard Electrical Code; is the National Electrical Code with Georgia State Amendments.

Georgia State Minimum Standard Energy Code; is the International Energy Conservation Code with Georgia State Amendments.

Georgia State Minimum Standard Fire Code; is the International Fire Code with Georgia State Amendments.

Georgia State Minimum Standard Gas Code; is the International Fuel Gas Code with Georgia State Amendments.

Georgia State Minimum Standard Mechanical Code; is the International Mechanical Code with Georgia State Amendments.

Georgia State Minimum Standard One and Two Family Dwelling Code; is the International Residential Code with Georgia State Amendments.

Georgia State Minimum Standard Plumbing Code; is the International Plumbing Code with Georgia State Amendments.

302.4 Weeds. All premises and exterior property shall be maintained free from weeds or plant growth in excess of ten (10) inches. All noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided; however, this term shall not include cultivated flowers and gardens.

303.2 Enclosures. Change 48" to 60" to conform to section 7.304 (19) (g) of Chapter 7 Article 3 of the City of Woodstock Land Development Code.

Delete Section 304.13.2 Openable Windows. Without Substitution

Delete Section 304.14 Insect Screens. Without Substitution

Delete Section 304.17 Guards for Basement Windows. Without Substitution

Delete Section 305.3 Interior Surfaces. Without Substitution

Delete Section 305.6 Interior Doors. Without Substitution

Delete Section 304.2 Protective Treatment. Without Substitution

306.1 General. Where required every exterior and interior flight of stairs shall have a handrail. Every open portion of a stair, landing, balcony, porch, deck, ramp or other walking surface which is more than 30 inches (762 mm) above the floor or grade

below shall have guards. Handrails and Guards shall be installed in accordance with the adopted Georgia State Minimum Standard Building Code or Georgia State Minimum Standard One and Two Family Dwelling code.

Exception: Handrails and Guards shall not be required where exempted by the adopted Building or One and Two Family Dwelling codes.

401.3 Alternative devices. In lieu of the means for natural light and ventilation herein prescribed, artificial light or mechanical ventilation complying with the *Georgia State Minimum Standard Building Code or Georgia State Minimum Standard One and Two Family Dwelling Code* shall be permitted.

505.1 General. Every sink, lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or to an approved private water system. All kitchen sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water in accordance with the *Georgia State Minimum Standard Plumbing Code*.

602.3 Heat supply. Every owner and operator of any building who rents, leases or lets one or more dwelling units or sleeping units on terms, either expressed or implied, shall make available (but not necessarily at the owner or operator's expense) a supply of heat during the period from 1 October to 1 May sufficient to maintain a temperature of not less than 68°F (20°C) in all habitable rooms, bathrooms, and toilet rooms.

602.4 Occupiable work spaces. Indoor occupiable work spaces shall be supplied with heat during the period from 1 October to 1 May to maintain a temperature of not less than 65°F (18°C) during the period the spaces are occupied.

604.2 Service. The size and usage of appliances and equipment shall serve as a basis for determining the need for additional facilities in accordance with the *Georgia State Minimum Standard Electrical Code*. Dwelling units shall be served by a three-wire, 120/240 volt, single-phase electrical service having a rating of not less than 60 amperes.

701.1 Scope. The provisions of this chapter shall govern the minimum conditions and standards for fire safety relating to structures and exterior premises, including fire safety facilities and equipment to be provided. The City Fire Marshall shall have additional authority to enforce Chapter 7 of the GSMSPMC.

(Ord. of 6-20-2011, § 1)

Sec. 38-63. Additional remedy permitted.

In addition to the procedures and remedies in this article, the code official and designees may issue citations for violations of state minimum standard codes, and such other codes adopted by the city, and conditions creating a public health hazard or general

nuisance, and seek to enforce such citations in the municipal court, prior to issuing a complaint in rem as provided in this article.

(Ord. of 6-20-2011, § 1)

Secs. 38-64—38-75. Reserved.

Sec. 38-76. Citation authorization.

The code official, including any code enforcement officer or building department official (as defined in section 202 of the WPMC), and law enforcement officers are hereby authorized to issue citations to violators of this Code requiring such violators to appear in the Municipal Court of the City of Woodstock.

(Ord. of 6-20-2011, § 1(38-33))

Sec. 38-77. Citation procedures.

Prior to the issuance of a citation(s) to violator(s) of this Code, those persons authorized in section 38-33 must follow the procedures below to obtain code compliance from said violator(s), except in cases of emergency (See Section 109 WPMC).

(1)

A notice shall be delivered to the violator or property owner as set forth in Section 107 of the WPMC.

(2)

Notice of violation. If the violator(s) do not comply with the time for compliance established as a part of the first contact a notice of violation (NOV) shall be served on the owner and interested parties in accordance with the WPMC section 107. The time for compliance as stated in the NOV shall not exceed ten calendar days unless the code official makes a finding that the violation is of such a nature that it is reasonable to allow additional time for compliance, but in any event not to exceed 30 days.

(3)

Citation issuance. At the expiration of the schedule time allotted following the issuance of the notice of violation, those persons authorized in section 38-33 are authorized to issue a citation(s) ("summons") to the violator(s), owner and interested parties requiring them to appear in the Municipal Court of the City of Woodstock. The citation shall include a statement that the court appearance is mandatory. The code official does have the discretion to issue additional notices to comply, instead of citation(s), if deemed necessary and appropriate, depending on the circumstances.

(4)

Repeat violators/violations. Any person who has been notified of the same violation on the same property may be considered a repeat violator and a citation may be issued without meeting the requirements of subsections (1) and (2) above.

(Ord. of 6-20-2011, § 1(38-34); Ord. of 3-11-2013)

Sec. 38-78. Citation issuance procedures.

Those persons authorized to issue citations shall follow the established municipal court and police department procedures with regard to the issuance of citations. Before a citation is issued the person shall coordinate with the municipal court clerk to docket the case and prepare for the hearing. The hearing shall be scheduled within 30 calendar days; additional time may be allowed by the code official if a delay in service or posting is anticipated.

Service of the citations shall meet the requirements set forth in Section 107 of the WPMC.

(Ord. of 6-20-2011, § 1(38-35))

Sec. 38-79. Hearing preparation.

The code official or any person processing a violation shall document all evidence of violations of this code, beginning with the determination that a violation exists, issuance of letters and notice to comply. Evidence shall include, but not be limited to: photographs, sound and video recordings, notes, correspondence, compliant forms, and witness testimony. The code official shall review all evidence and provide said evidence to the city solicitor prior to the hearing.

(Ord. of 6-20-2011, § 1(38-36))

Sec. 38-80. Hearing and adjudication.

The hearing and court procedures shall adhere to those established by the Official Code of the City of Woodstock, Georgia, for the municipal court of the same.

(Ord. of 6-20-2011, § 1(38-37))

Sec. 38-81. Jurisdiction to try and abate.

The municipal court shall have full jurisdiction to try and dispose of all questions of nuisance affecting the public health, safety or welfare, and shall also have jurisdiction to try and, in case of conviction, to punish persons failing to abate nuisances, as prescribed in section 1-7 of the Code of Ordinances of the city. Any appeal from any decision of the municipal court shall be to the Superior Court of Cherokee County and shall be filed within 30 days of the date of the decision of the municipal court.

(Ord. of 6-20-2011, § 1(38-38))

State law reference— Jurisdiction of municipal court to determine existence of nuisance and order its abatement, O.C.G.A. § 41-2-5.

Sec. 38-82. Abatement lien on property.

(a)

The amount of the cost of demolition, including all court costs, appraisal fees, administrative costs incurred by the city, and all other costs necessarily associated with the abatement action, including restoration to grade of the real property after demolition, shall be a lien against the real property upon which such cost was incurred.

(b)

The lien described in this section shall attach to the real property upon the filing of a certified copy of the order requiring repair, closure or demolition in the office of the clerk of superior court in the county, and shall relate back to the date of the filing of the lis pendens notice required under O.C.G.A. § 41-2-12(g). The clerk of superior court shall record and index such certified copy of the order in the deed records of the county and enter the lien on the general execution docket. The lien shall be superior to all other liens on the property, except liens for taxes to which the lien shall be inferior, and shall continue in force until paid. After filing a certified copy of the order with the clerk of superior court, the code official shall forward a copy of the order and a final statement of costs to the city tax collector.

(c)

It shall be the duty of the city tax collector to collect the amount of the lien in conjunction with the collection of ad valorem taxes on the property and to collect the amount of the lien as if it were a real property ad valorem tax, using all methods available for collecting real property ad valorem taxes, including specifically O.C.G.A. tit. 48, ch 4 (O.C.G.A. § 48-4-1 et seq.); however, the limitation of O.C.G.A. § 48-4-78, which requires 12 months of delinquency before commencing a tax foreclosure, shall not apply. The tax collector shall remit the amount collected to the city. Thirty days after imposition of the lien, the unpaid lien amount shall bear interest and penalties in the same amount as applicable to interest and penalties on unpaid real property ad valorem taxes.

(d)

The tax collector shall collect and retain an amount equal to the cost of administering a lien authorized by this section unless such costs are waived by resolution of the city governing authority. Any such amount collected and retained for administration shall be deposited in the general fund of the city to pay the cost of administering the lien.

(e)

The city may waive and release any such lien imposed on property upon the owner of such property entering into a contract with the city agreeing to a timetable for rehabilitation of the real property or the dwelling, building or structure on the property and demonstrating the financial means to accomplish such rehabilitation.

(f)

Where the abatement action does not commence in the superior court, review of a court order requiring the repair, alteration, improvement or demolition of a dwelling, building or structure shall be by direct appeal to the superior court under O.C.G.A. § 5-3-29.

(Ord. of 6-20-2011, § 1(38-39))

State law reference— *Municipal ordinances relating to unfit buildings and structures, O.C.G.A. § 41-2-9; service of complaints or orders on parties in interest and owners of unfit buildings or structures, O.C.G.A. § 41-2-12.*

I added this to address the trial court's opinion that our code lien enforcement procedures follow state law, specifically the enumerated provisions of OCGA 41-2-9(b).